

The Expiration of Idaho Code § 63-3622QQ
Equipment Used in Alternative Methods of Electricity Generation

Commonly Asked Questions and Answers

(Prepared by the Idaho State Tax Commission)

- 1) What does the June 30, 2011 deadline mean within the context of claiming the refund?
 - A. In order to be eligible for the refund of taxes paid to an Idaho vendor, the qualifying equipment must be delivered to the buyer and title must irrevocably pass to the buyer before July 1, 2011. Alternatively, by a valid contract that states so, a buyer may take title prior to delivery, but title must pass before July 1, 2011.
- 2) Does this mean all taxes must be paid as of June 30, 2011?
 - A. From the seller's perspective, tax is due to the state on an accrual basis, irrespective of the timing of the payment of sales tax by the buyer to the seller. A buyer may receive the refund after the vendor has remitted the tax to the state, subject to limitations discussed below.
- 3) If there is a contract between the buyer of a wind turbine and the manufacturer of the wind turbine in place before July 1, 2011, will the buyer be eligible for a rebate?
 - A. Only the sale of the turbine or other qualifying equipment is relevant. As noted previously, a sale occurs upon delivery and when title passes, or prior to delivery when a sales contract specifies an earlier title transfer.
- 4) Must the equipment be fully paid for when the sale occurs in order to qualify for the rebate?
 - A. The financing arrangements are not relevant to the refund issue.
- 5) What are the refund requirements for qualifying goods bought from non-registered vendors who do not collect Idaho sales tax?
 - A. Title must pass on or before the sunset date, June 30, 2011, or use tax is due on the purchase price.
- 6) The statute makes no mention of title passing. What is the basis for the Commission's reliance on the title?
 - A. In a sales tax case, the Idaho Supreme Court referred to the Uniform Commercial Code for guidance to determine when a sale takes place (*Old West Realty Inc. v. Idaho State Tax Commission*, 110 Idaho 546, 716 P.2d 1318 (1986)). Idaho Code 28-2-105(2) provides that "Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell." A contract to sell will not qualify for the refund.

Idaho Code 28-2-401(1) provides that

"Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28-2-501) and unless otherwise agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title

(property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (chapter 9) title to goods passes from the seller to the buyer in any and on any conditions explicitly agreed on by the parties.”

In sum, title cannot pass until the goods exist and are identified, but they do not have to be complete and ready for delivery. However, and subject to the limitation in the previous sentence, if the goods have not been delivered by June 30, 2011, there must be an explicit agreement between the parties by contract that title passes prior to July 1, 2011.

- 7) If project certification (by a public utility, cooperative, municipality, or the Public Utilities Commission) takes place after June 30, 2011, can refunds still be obtained?
 - A. There is no statutory requirement that project certification must take place prior to July 1, 2011, but a refund cannot be made until certification is complete, per paragraph (3) of the statute.
- 8) Must the project be complete and operational by June 30, 2011 in order for a refund to be approved?
 - A. Paragraph (3) of the statute says, “The refund request shall state that the taxpayer *will construct or has constructed* a project that will generate sufficient kilowatts of electricity at the project site...” Thus, project completion or operation at any level is not required, but only qualifying materials purchased prior to July 1, 2011, will be eligible for refunds.
- 9) How are the recapture provisions of Idaho Code § 63-3622QQ interpreted?
 - A. After a qualifying alternative energy generating project ceases output, it must have had 60 prior months of required electricity production in order to be free of the tax recapture provisions.